

TO: Chairman and Members

DATE: November 3, 2010

**SUBJECT: AB 900 2007 Local Jail Construction Funding Program
Emergency Amendments to the Regulations**

AGENDA ITEM: 1

**ACTION: X
INFORMATION:**

RESOURCE PERSON: Charlene Aboytes

Summary:

Governor Schwarzenegger signed Assembly Bill (AB) 1628 on October 19, 2010. This bill was introduced, in part, to amend language in Government Code Sections 15820.906 and 15820.916 and provide statutory authority for counties to utilize the design-build process for jail projects financed through the AB 900 Local Jail Construction Funding Program. This agenda item requests approval of: the draft emergency revisions to the AB 900 2007 Local Jail Construction Funding Program regulations; approval to submit the revised regulations to the Office of Administrative Law (OAL); the appointment of a chairperson for the public hearing; and approval to begin the public comment process.

Background:

One of the Corrections Standards Authority's (CSA) responsibilities described in AB 900 is the drafting of regulations that explain the requirements of that legislation including CSA's role in administering the \$1.2 billion in construction financing. AB 900 contains an urgency clause, making it necessary to expedite this regulation development process. This accelerated process is done through an Emergency/Operational Necessity filing pursuant to Penal Code Section 5058.3.

The AB 900 2007 Local Jail Construction Funding Program regulations were approved by the CSA Board at their September 2008 meeting. Subsequently, the regulations were submitted to the OAL and were effective in November 2008. However, there was no statutory authority for the design-build process and the 2007 Local Jail Construction Funding Program regulations do not specifically allow the design-build process for the AB 900 projects. Because of this, language in AB 1628 was necessary to amend Government Code Sections 15820.906 and 15820.916. This language provides statutory authority for counties to utilize the design-build process. Governor Schwarzenegger signed the bill on October 19, 2010 and CDCR has initiated this emergency/operational necessity regulation filing to add language to the Title 15 2007 Local Jail Construction Funding Program regulations to enable counties to utilize the design-build process, if they so desire.

The design-build process is a construction project delivery method where the design work and the construction of the project are performed by a team brought together in a collaborative environment to build a project by overlapping tasks, for instance beginning site work when the building is still being designed. Because of its collaborative nature, it provides a greater level of oversight of the project.

San Diego is one of the counties that was conditionally awarded AB 900 jail financing. It is their intent to utilize the design-build process (instead of the traditional design-bid-build) to construct a new 1,270 bed women's jail. San Diego has been anxiously awaiting authorization to begin work on their 1,270 bed jail and CDCR is looking forward to constructing a 500-bed secure community reentry facility in the county. This emergency regulations process is essential for the safety of the public, correctional staff and inmates. In addition, the State and counties can leverage and maximize scarce public funds in a favorable bid climate. This will result in stretching the State's and the County's financing dollars.

CSA staff received considerable assistance from the Department of Finance and CDCR Office of Legal Affairs in crafting the draft emergency amendments to the 2007 Local Jail Construction Funding Program regulations. They are attached for your review along with a document that contains the reasons for the amendments (Attachments A and B). Upon Board approval, these regulations will be submitted to the OAL. Upon their approval, the regulations will be temporarily effective for 160 days (the end of this period is approximately May 2, 2010). During that time CSA staff will send the regulations out for a 45-day public comment period. Following the public comment period, a public hearing will be held in Sacramento. (If an additional public comment period is needed, it will be scheduled after the special session.) Staff will bring these regulations to a future Board meeting for approval and anticipates submitting the emergency rulemaking package to the OAL on or before May 2, 2010.

At the November 18, 2010 meeting, staff will be bringing another agenda item before this Board regarding regulation changes. These changes will affect the AB 900 and the SB 81 construction programs. Those changes will not be of an emergency nature and will follow the regular rulemaking process.

Recommendation/Action Needed:

Staff recommends:

1. The Board approve the draft emergency amendments to the regulations.
2. The Board direct staff to submit the draft emergency amendments to the regulations to the Office of Administrative Law.
3. The Board appoint CSA Board member Ed Prieto as chair for the upcoming public hearing regarding the draft emergency amendments to the regulations.
4. The Board direct staff to begin the public comment process regarding the draft emergency amendments to the regulations.